

CITY OF GAITHERSBURG
PLANNING COMMISSION

ENABLING LEGISLATION
AND RULES OF PROCEDURE

SELECTED ZONING ORDINANCE SECTIONS

ARTICLE XIV. CITY PLANNING COMMISSION

Sec. 24-239. Creation; composition; appointment and removal of members; compensation; and ratification of decisions

There is hereby created and established a city planning commission, which shall consist of either five (5) or seven (7) members, and one (1) alternate member, who shall be appointed by the mayor and confirmed by the city council for five-year terms, or until their successor takes office. Members of the commission may be removed after public hearing by the city council for inefficiency, neglect of duty or malfeasance in office. Vacancies occurring, other than through an expiration of a term of office, shall be filled by appointment by the mayor, subject to confirmation by the city council for the unexpired term.

Members of the commission shall receive such compensation as deemed appropriate by the city council. The commission shall elect a chairperson and vice-chairperson from among its members, who shall serve in such capacity for a one-year term. The chairperson and vice-chairperson shall be eligible for reelection.

Persons who are members of the city planning commission on the effective date of this enactment shall continue to serve until the conclusion of their present terms.

All terms of existing commission members and all prior acts and decision of the city planning commission are hereby ratified and shall remain in full force and effect.

Sec. 24-240. Powers and duties

The city planning commission shall have those powers, duties and authority assigned to it by article 66B, Maryland Code Annotated, and other laws of the State of Maryland; the zoning ordinance of the City of Gaithersburg; and those acts or enactments of the city council of the City of Gaithersburg.

Any decision of the commission may contain such conditions as are necessary to preserve and protect the public health, safety and general welfare of the inhabitants of the city.

Sec. 24-241. Procedural matters

(a) The planning commission may adopt rules of procedure governing conduct of its proceedings and matters under its jurisdiction. Meetings of the board shall be open to the public and shall be held at the call of the chairperson and at such other times as the commission may determine. The chairperson, or, in his absence, the vice-chairperson may administer oaths and compel the attendance of witnesses.

(b) The planning commission shall keep minutes and, where appropriate, transcripts and other records showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, all of which shall be a public record and filed in the offices of the planning department.

Sec. 24-242. Appeals

Any person(s) aggrieved by any final order, decision or determination of the city planning commission may appeal the same to the city board of appeals within the time provided by, and the requirements of, article VII of this chapter 24, and thereafter, to the Circuit Court for Montgomery County, Maryland, pursuant to the Maryland Rules of Procedure, chapter 1100, subtitle B. Further appeal may be taken to the Court of Special Appeals of Maryland during the period and in the manner prescribed by the Maryland Rules of Procedure.

ARTICLE V. SITE DEVELOPMENT PLANS

Sec. 24-170. General conditions

The city planning commission shall approve the site development plan only upon a finding by it that the buildings, structures and uses proposed will not:

(a) Adversely affect the health or safety of persons residing in or working on the land in question or in the neighborhood thereof.

(b) Be detrimental to the public welfare or adversely affect the use or development of adjacent or surrounding properties.

(c) Constitute a violation of any provisions of this chapter or any other applicable law, regulation or ordinance.

(d) Be incompatible or inharmonious with other existing uses or with existing and proposed adjacent development.

Sec. 24-170A. Special conditions

The city planning commission may approve a site development plan for properties specifically identified in a master plan or amendment thereto having special conditions or requirements for the development and use thereof, only upon finding that said site development plan is consistent with the conditions and requirements specified in the master plan or amendment regarding said property.

The special conditions and requirements for the development and use of these properties shall be imposed and set forth in the master plan or amendment thereto as part of the master plan process. All such site development plans shall be subject to enforcement procedures and requirements applicable to site development plans generally as established by this Code.

The provisions of this section shall apply only to master plans and amendments thereto adopted after December 24, 1984.

Sec. 24-171. Site plan review

In the review and approval of a site development plan, the planning commission shall have the following powers which shall be exercised for the purpose of avoiding adverse impact on the neighboring properties and public facilities, reducing traffic hazards and improving traffic circulation within or without the property which is the subject of the plan, preserving existing desirable natural features, assuring adequate light and air to buildings within or without the subject property, providing adequate access to such buildings by fire and rescue equipment, providing convenient access to such buildings from off-street parking spaces, avoiding overcrowding of persons and buildings within the development, ensuring the provision or development of recreational and other amenities, and facilitating the creation and maintenance of common or public open space, parking areas and private drainage systems.

- (a) To determine the location, size and shape of buildings;
- (b) To determine the location, design and dimensions of streets, driveways and parking areas;
- (c) To require parking facilities in addition to the minimum number of parking spaces otherwise required by this chapter;
- (d) To determine the maximum number of dwelling units to be located within any one building;
- (e) To determine the location of common open space;
- (f) To establish the finished grade of the property;
- (g) To establish minimum materials and design standards for private streets, driveways, parking areas and drainage systems, where such standards have not been established by ordinance;
- (h) To require screen planting or fencing;
- (i) To impose other conditions upon the approval of the plan where necessary to assure that the use of the property will be consistent with the purpose and intent of this chapter;
- (j) To determine whether the site development plan will achieve a maximum of compatibility, safety and efficiency, considering but not limited to the following functions: Height, building design, arrangement and scale of development; vehicular circulation system, including access and off-street parking and loading; landscaping, screening, buffering, open space, lighting, signage and pedestrian circulation. The fact that a site plan complies with all of the stated general regulations, development standards or other requirements of the zone shall not, by itself, be deemed to create a presumption that the proposed site development plan is, in fact compatible with adjacent land uses and development and, in itself, shall not be sufficient to require approval of the site plan;
- (k) To require that, as a condition to the issuance of building permits, bonds or other financial security or instrument be posted with the city, satisfactory to the city manager, to ensure the construction and/or maintenance of approved on-site, private recreational facilities, amenities, buildings and areas, and any landscaping, screening, access and parking elements being part of the approved site plan; and
- (l) To require that property be subdivided, resubdivided or replatted and in connection therewith, require dedication of portions of the land to public use, subject to site plan review for public improvements reasonably related to serving the residents, workers, patrons or visitors of the property or to impose a fee for the same in lieu of dedication.

THE RULES OF PROCEDURE FOR THE CITY OF GAITHERSBURG PLANNING COMMISSION

Sec. 1. Purpose

The purpose of these rules is to establish procedures for the conduct of hearings in all cases in which a final decision is made by the Planning Commission after a hearing (a) required by law or (b) conducted by practice of the Commission. Hearings which shall be subject to these rules include, but are not limited to:

- A. Preliminary plans of subdivision;
- B. Site plan review (concept, preliminary, final and amendments to final), which may include subdivision;
- C. Recommendations to the City Council on local map amendments, text amendments, master plan amendments, annexations, and matters involving historic preservation;
- D. Amendments made to optional method and schematic development plans; and
- E. Any other matters upon which the Planning Commission may be mandated to act pursuant to public hearing by law or ordinance.

Sec. 1.1. Sign Posting

A. All hearings subject to these rules, as set forth in Section 1, shall be posted with a sign, except for hearings placed on the Planning Commission's consent agenda. The sign shall be provided by the Planning Commission staff and

shall be posted by the applicant at least nine (9) days before the hearing. The sign shall have (at least) the following information shown on it:

- (1) The title of "Planning Commission Hearing;"
- (2) The type of application;
- (3) The application number;
- (4) Date, time, and place of the public hearing; and
- (5) A phone number for additional information.

B. If the property has frontage on one (1) or more improved streets, there shall be one (1) sign posted for each one thousand (1,000) feet (or fraction) of frontage on each street. The sign(s) shall be posted on the property near the street right-of-way, so as to be visible from the improved portion of the street. When more than one (1) sign is required to be posted along a street, the signs shall, where practicable, be evenly spaced along the street.

C. If the property does not have frontage on an improved public street, then one (1) sign shall be placed on the property by the applicant. This sign shall be near the boundary of the property and visible from an adjoining property. Another sign shall be placed by the applicant near to, and visible from, the improved portion of the nearest, most-traveled street. This sign shall indicate it is not on the subject property.

D. All signs posted shall be conspicuous and legible.

E. The applicant shall be responsible for reasonable maintenance of all signs. In the event a sign is removed, falls down, or otherwise is not on the property or in the right-of-way during the pendency of and until the date of the hearing, it shall be the responsibility of the applicant to re-post the sign.

F. The applicant shall file a written statement in the record of posting.

Sec. 1.2. Notification

All hearings subject to these rules, as set forth in Section 1, shall be included on the Commission tentative meeting agenda, which shall be mailed at least nine (9) days before the hearing, except for hearings on the consent agenda. The tentative agenda shall be mailed to all abutting and confronting properties relating to the property under consideration.

Sec. 2. Order of presentation

Unless otherwise determined by the Chairman, the following order of presentation shall apply:

- A. Presentation by staff;
- B. Public agency comments, if any;
- C. Presentation by Applicant;
- D. Presentation by Opposition;
- E. Public comment and questions;
- F. Rebuttal by Applicant;
- G. Summation, if requested, by parties.

The Chairman may request larger groups or associations to select an individual to speak for the group for the purpose of avoiding repetition of testimony. The selection of a spokesperson is not intended to prevent the non-repetitive individual testimony of group members. The Chairman may also take such other actions to facilitate the orderly, expeditious receipt of testimony and other evidence and argument.

Sec. 3. Preliminary action

Upon convening the hearing there shall be a brief explanation of the purpose of the hearing. There shall also be a brief summary by staff of any information or data, which has been received in the case file, before public discussion and comments begin. The case file shall be a part of the record and shall be available to the public at reasonable times.

Sec. 4. Information from the public

Each speaker at a hearing shall state: (a) name, and (b) home address, or, if speaking for a group or organization, the name and address, if any, of the group or organization. The Chairman may announce reasonable registration requirements for speakers. Speakers at hearings may not be limited by residency or proximity requirements.

Sec. 5. Cross-examination of witness

The Chairman, upon request, shall permit any party to a case to cross-examine a witness at the conclusion of that witness' testimony. For purposes of this section, a party to a case includes the applicant and any person or group that has, in writing or orally for the record, identified themselves as being in opposition to the applicant. Examination should be limited and directed to information and evidence presented by the witness. The opportunity to cross-examine a witness may not be used by the examiner to begin his/her testimony. The Chairman may, in the exercise of discretion, limit the number of examiners for each side. General questions about an applicant's plan may be asked separately from cross-examination.

Sec. 6. Time guidelines

The Chairman, in his/her discretion, may impose time limitations on the presentation of evidence and testimony at a hearing in order to facilitate the orderly and expeditious conduct of the hearing.

Sec. 7. Recess to another time and place

Any hearing may be recessed to a time and place which is announced, or posted at the time and place for which notice originally has been given, and no further notice or publication shall be necessary in order to reconvene the recessed hearing. However, if the hearing is recessed to another regularly scheduled meeting of the Commission, then notice shall be provided in the agenda of the Commission.

Sec. 8. Evidence and submission guidelines

A. In all cases in which the applicant is required to submit a plan for consideration by the Planning Commission at a hearing (i.e., preliminary plan of subdivision, site plan review, etc.), the applicant shall submit those plans three (3) weeks and five (5) days before the first meeting of the month, except for Consent items. Any revisions of the plan shall be submitted to staff for inclusion in the record at least eight (8) calendar days before the hearing date. If the applicant submits a revised plan less than eight (8) calendar days before the hearing, the Planning Commission may proceed with the hearing only after granting a plan submission time waiver for good cause shown by the applicant for submitting the revised plan late.

B. Although not guided by formal rules of evidence, certain rules will be followed at hearings, as indicated below:

(1) Hearsay evidence, if relevant, will normally be accepted into the record.

(2) Objections to testimony by a party to a case will only be sustained for the most compelling reasons so that the purpose of providing wide latitude to witnesses will be served.

(3) Objections to testimony by a party to a case must be made at the time the information is presented or the objection will be considered waived.

(4) The Commission may take administrative notice of matters of common knowledge or expertise in reaching a decision on a case.

(5) Testimony, which is immaterial, repetitive or irrelevant, shall not be allowed.

C. The applicant may withdraw its plan from consideration by the Planning Commission at any time up until the Planning Commission votes to approve or deny the plan.

Sec. 9. Closing the record

Unless otherwise determined by the Commission, the record will remain open until the Commission votes to approve or deny the plan. If the Commission closes the record by duly adopted motion prior to the vote to approve or deny the plan, no additional evidence will be received except (a) for good cause shown as to why the evidence was not presented while the record was open and (b) a showing that the evidence is material and relevant.

Sec. 10. Reconsideration

A. A request for reconsideration of any matter in which the Commission has final decisionmaking authority, may only be made by an aggrieved party, must be in writing, and unless waived by the Commission for just cause, must be received by the Planning Commission no later than seven (7) days after the date of the final decision. The request must specifically state the basis upon which the aggrieved party believes the Commission's decision should be reconsidered. The Commission may grant a request to reconsider, provided sufficient grounds are demonstrated. Such grounds may include:

(1) a clear showing that the action of the Commission did not conform to relevant law or its rules of procedure;

(2) evidence indicating that certain pertinent and significant information relevant to the Commission's decision was not presented at the hearing before the Commission or otherwise included in the record, together with a statement detailing why such information was not timely presented; or

(3) such other appropriate compelling basis as determined by the Commission.

The fact that a party raises an issue worthy of reconsideration does not itself require the Commission to reconsider a prior action.

B. If a request for reconsideration is timely received, City staff shall place the written request for reconsideration on the agenda of the Commission for the next regular meeting of the Commission. Commission members may question staff or any interested party then present to clarify points raised in the written request; otherwise, testimony need not be received. At such time, Commission members shall determine whether the written request raises a proper and sufficient basis for reconsideration. Any commission member who:

(1) voted in the majority on the action drawn into question, and

(2) believes an issue warranting reconsideration has been raised,

may then move to reconsider the action. If no such member remains on the Commission, the Chairman may make the motion on his/her own initiative or at the request of any Commission member.

C. If a motion to reconsider has been duly adopted by the Planning Commission, the prior final decision of the Commission shall be void and the record before the Commission shall be automatically reopened. The Commission shall schedule a hearing for a subsequent date and time, providing all parties of record at least ten (10) days advance written notice of the hearing.

D. A timely filed request for reconsideration shall not operate to extend any time for appeal provided by applicable law so long as the Planning Commission holds a regular meeting within fourteen (14) days after the decision which is the subject of the reconsideration request. If the Planning Commission does not hold a regular meeting within fourteen (14) days after the decision which is the subject of the timely filed reconsideration request, then the time for appeal is automatically extended until the expiration of three (3) calendar days after the Commission next holds a regular meeting.

Sec. 11. Rule changes and supplements

A. Suspension of Rules -- The suspension of any rule of procedure shall require the unanimous concurrence of those members of the Commission present and voting. A separate suspension of the rules shall be necessary for each proposition.

B. Repeal or Amendment of Rules -- No motion, order or resolution to repeal or amend a rule of the Commission shall be considered or acted upon unless it shall have been submitted in writing to the Commission at least two (2) weeks prior thereto, together with the written text of any proposed amendment. The repeal or amendment of any rules of the Commission may be by majority vote of those members present and voting.

C. Robert's Rules of Order -- The rules of parliamentary practice and procedure, as set forth in the 1982 Poor House Press edition of Robert's Rules of Order, and except as modified by these Rules of Procedure, shall govern the Commission in all cases to which these Rules of Procedure apply.

Sec. 12. Procedure for use of alternate planning commissioner

A. The Planning Commission Alternate Member shall serve in the place of any regular member of the Commission who is absent or disabled from service. In such instances, the Alternate Member shall have all the powers, duties and responsibilities of a regular member and shall fully participate in all matters before the Commission.

B. The Planning Commission Alternate Member shall also participate fully with the Planning Commission when a full complement of Commission members are present on all matters and proceedings which are not regulatory in nature. Regulatory matters involve quasi-judicial proceedings in which the Planning Commission exercises final decision making authority. Non-regulatory matters involve all other matters coming before the Commission including, but not limited to, matters involving the rendition of recommendations to the Mayor and City Council, City Board of Appeals or other agencies of the City government.

C. The Planning Commission Alternate Member shall not participate in any regulatory matters coming before the Commission when a full Commission complement of members is present.

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